

February 11, 2020

VIA E-MAIL

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *Wells Fargo & Company*
Shareholder Proposal of Harrington Investments, Inc.
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

In a letter dated December 27, 2019, we requested that the staff of the Division of Corporation Finance concur that our client, Wells Fargo & Company (the “Company”), could exclude from its proxy statement and form of proxy for its 2020 Annual Meeting of Shareholders a shareholder proposal (the “Proposal”) and statements in support thereof received from Harrington Investments, Inc. (the “Proponent”).

Enclosed as Exhibit A is a signed letter on behalf of the Proponent withdrawing the Proposal. In reliance on this communication, we hereby withdraw the December 27, 2019 no-action request.

Please do not hesitate to call me at (202) 955-8287 or Mary E. Schaffner, Senior Vice President and Senior Company Counsel, at (612) 667-2367.

Sincerely,



Elizabeth A. Ising

Enclosures

cc: Mary E. Schaffner, Wells Fargo & Company
John C. Harrington, Harrington Investments, Inc.
Sanford Lewis

EXHIBIT A

SANFORD J. LEWIS, ATTORNEY

February 7, 2020

Via electronic mail

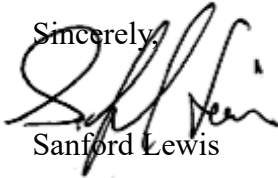
Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Shareholder Proposal to Wells Fargo Inc. Regarding study of corporate governance/public benefit company on Behalf of Harrington Investments Inc.

Ladies and Gentlemen:

On behalf of the proponent, Harrington Investments, Inc., I am writing to acknowledge receipt of the supplemental reply of Wells Fargo of February 2, 2020. We agree with the Company that the report prepared by the consultant substantially implements the proposal and therefore withdraw the proposal.

Sincerely,



Sanford Lewis

Cc: Elizabeth Ising

February 2, 2020

VIA E-MAIL

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *Wells Fargo & Company*
Supplemental Letter Regarding Shareholder Proposal of Harrington
Investments, Inc.
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

On December 27, 2019, we submitted a letter (the “No-Action Request”) on behalf of Wells Fargo & Company (the “Company”) notifying the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) that the Company intends to omit from its proxy statement and form of proxy for its 2020 Annual Meeting of Shareholders (collectively, the “2020 Proxy Materials”) a shareholder proposal and statements in support thereof (the “Proposal”) received from Harrington Investments, Inc. (the “Proponent”).

The Proposal states:

Resolved: that Shareholders request the Board to commission an independent study, utilizing outside experts, with a report and recommendations to shareholders by October 2020, to assess the feasibility of taking the necessary actions to become a Delaware Public Benefit Corporation, or otherwise implementing similarly enforceable public purpose, accountability and reporting measures to the Company’s corporate governance documents to protect the interests of our Company’s critical stakeholders but without becoming such a Public Benefit Corporation.

BASIS FOR SUPPLEMENTAL LETTER

Consistent with the No-Action Request, we hereby respectfully request that the Staff concur in our view that the Proposal may properly be excluded from the 2020 Proxy Materials pursuant to Rule 14a-8(i)(10) because (i) the Company’s Board of Directors (the “Board”), acting through its the Governance and Nominating Committee (the “Committee”), engaged an outside expert, Richards, Layton & Finger, PA, a Delaware law firm (“Richards Layton”) to conduct an independent study and prepare a report with recommendations to shareholders

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assessing the feasibility of the Company taking the necessary actions to become a Delaware public benefit corporation or otherwise implementing similarly enforceable public purpose, accountability and reporting measures to the Company's corporate governance documents but without becoming a Delaware public benefit corporation (the "Report"), and (ii) the Company published the Report, together with the Company's response to the Report (the "Company Response"), on its website on January 30, 2020.

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(i)(10) Because The Company Has Substantially Implemented The Proposal

A. Background

Rule 14a-8(i)(10) permits the exclusion of a shareholder proposal "[i]f the company has already substantially implemented the proposal." The Commission stated in 1976 that the predecessor to Rule 14a-8(i)(10) was "designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." *See* Exchange Act Release No. 12598 (July 7, 1976). Originally, the Staff narrowly interpreted this predecessor rule and granted no-action relief only when shareholder proposals were "'fully' effected" by the company. *See* Exchange Act Release No. 19135 (Oct. 14, 1982). By 1983, the Commission recognized that the "previous formalistic application of [the Rule] defeated its purpose" because proponents were successfully convincing the Staff to deny no-action relief by submitting shareholder proposals that differed from existing company policy by only a few words. Exchange Act Release No. 20091, at § II.E.6. (Aug. 16, 1983) (the "1983 Release"). Therefore, in 1983, the Commission adopted a revised interpretation to the rule to permit the omission of shareholder proposals that had been "substantially implemented." 1983 Release. The 1998 amendments to the proxy rules codified this position. *See* Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release"), at n.30 and accompanying text.

Under this standard, when a company can demonstrate that it already has taken actions to address the underlying concerns and essential objectives of a shareholder proposal, the Staff has concurred that the shareholder proposal has been "substantially implemented" and may be excluded as moot. The Staff has noted that "a determination that the company has substantially implemented the proposal depends upon whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal." *Texaco, Inc. (Recon.)* (avail. Mar. 28, 1991).

In applying this standard, a company need not implement a shareholder proposal in exactly the manner set forth by the proponent or in the manner that a shareholder may prefer. *See* 1998 Release at n.30 and accompanying text. Differences between a company's actions and

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a shareholder proposal are permitted as long as the company's actions satisfactorily address the shareholder proposal's essential objectives.

B. Overview Of The Report

The Board, acting through the Committee (to which the Board has delegated authority to review shareholder proposals related to the governance matters the Committee oversees),¹ engaged Richards Layton to conduct the study and prepare the report requested in the Proposal. Richards Layton completed the study and delivered the Report to the Committee in January 2020. The Company has made the Report, together with the Company Response, available to shareholders on its website.² *See also Exhibit A.*

In Section A, the Report assesses the feasibility of the Company becoming a Delaware public benefit corporation. Section A examines the process of becoming a Delaware public benefit corporation and notes that the Company must “either amend[] its certificate of incorporation or merg[e] with or into another entity resulting in the shares of the existing corporation being converted into shares of a public benefit corporation,” and obtain certain Board determinations and a shareholder vote. Regarding the Company's conversion to a Delaware public benefit corporation, the Report further reviews the potential appraisal rights that may arise in connection with the conversion, as well as governance considerations and the statutory and fiduciary obligations that would apply to the Company and the Board in its new corporate form.

In Section B, the Report assesses the feasibility of the Company otherwise implementing public purpose, accountability and reporting measures in its governing documents without becoming a Delaware public benefit corporation. Section B analyzes the process and requirements for amending the “purpose clause of [the Company's] certificate of incorporation to add a public benefit purpose that does not opt into public benefit corporation status” and concludes that “[s]uch amendments would not result in the corporation becoming a public benefit corporation and may not alter directors' fiduciary duties to stockholders and must otherwise be permitted under Delaware law.” Section B also analyzes the feasibility of implementing this public benefit purpose by means of the Company's governance documents, noting that “[f]or such a provision to be enforceable, it would need to be included in the certificate of incorporation and could not be accomplished through an amendment to the bylaws or an amendment to the corporate governance guidelines or another policy of the corporation.” Section B further notes that an accountability or reporting measure could be included in the Company's certificate of information or bylaws and could be included in the corporate

¹ See Wells Fargo & Company Governance and Nominating Committee Charter, available at <https://www.wellsfargo.com/assets/pdf/about/corporate/governance-and-nominating-committee-charter.pdf>.

² See Independent Study and Report and Wells Fargo & Company Response regarding Public Benefit Corporations, available at <https://www.wellsfargo.com/assets/pdf/about/corporate/public-benefit-corporations-report.pdf>.

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governance guidelines or another policy of the Company; “however, the enforceability of such a measure [in the corporate governance guidelines or other policy] would depend on applicable law and other relevant factors.”

In Section C, the Report concludes that both of the proposed actions “are feasible as a technical matter under Delaware law,” but recommends that the Board and shareholders consider “various additional relevant factors and issues relating to the practicality and appropriateness of taking these steps.” The Report then describes certain such relevant factors, including, for example: how “obtaining the required [share]holder approval” in both instances “could be challenging”; the lack of precedent and “uncertainty regarding decision-making in” such a public benefit corporation “where the interests of [share]holders and other stakeholders or the public benefit diverge”; regulatory uncertainty as to how a financial institution like the Company would be regulated or the markets for its securities would be impacted by the change; the numerous costs associated with the requested actions; and the Company’s existing public benefit activities and initiatives under its existing corporate governance structure.

Further, in consideration of the Report, the Company Response describes that the Board, acting through the Committee, took “into account the information in the Report and for the additional reasons discussed [in the Company Response], the Board determined that while aspects of the Proposal may be technically feasible, implementing the Proposal is neither appropriate nor necessary, and the Board does not recommend any further action regarding the Proposal.” The Company Response further describes the Company’s commitment to stakeholders and explains why the Board concluded that the Company’s “existing corporate governance structure provides [its] management team and Board with appropriate flexibility to promote the interests of [its] various stakeholders and to manage important environmental, social, and governance matters without the significant uncertainties, costs, and distractions that the Proposal’s implementation would require.” The Company Response is thus additionally responsive to the Proposal’s request for “recommendations to shareholders” because, in addition to the recommendations provided by Richards Layton in the Report, the Company Response sets forth recommendations from the Board regarding the advisability of taking the actions discussed.

C. Committee Action And Publication Of The Report Substantially Implements The Proposal

The Report substantially implements the Proposal for purposes of Rule 14a-8(i)(10) because it implements the Proposal’s essential objective of having the Board (through the Committee) commission an independent study, including a report and recommendations to shareholders, that utilized outside experts and assessed the feasibility of the Company becoming a Delaware public benefit corporation or implementing similarly enforceable public purpose, accountability and reporting measures without becoming a Delaware public benefit corporation. The implementation of the Proposal through the Committee’s action and the Report thus presents precisely the scenario contemplated by the Commission when it adopted the predecessor to

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Rule 14a-8(i)(10) “to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management.” 1976 Release.

The Proposal asks the Board to commission an independent study “assess[ing] the feasibility of taking the necessary actions to” have the Company become a Delaware public benefit corporation or implement specific measures regarding its purpose without becoming a Delaware public benefit corporation. As discussed above, these actions have been taken by the Committee’s action and the publication of the Report. When a company has already acted favorably on an issue addressed in a shareholder proposal, Rule 14a-8(i)(10) does not require the company and its shareholders to reconsider the issue. In this regard, the Staff has on numerous occasions concurred with the exclusion of shareholder proposals under Rule 14a-8(i)(10) that requested reports where the company already publicly disclosed the subject matter of the requested report. *See, e.g., Mondelēz International, Inc.* (avail. Mar. 7, 2014) (concurring with the exclusion of a shareholder proposal requesting a report on the human rights risks of the company’s operations and supply chain where the company had achieved the essential objective of the shareholder proposal by publicly disclosing its risk-management processes); *The Boeing Co.* (avail. Feb. 17, 2011) (concurring with the exclusion of a shareholder proposal requesting the company assess and report on human-rights standards where the company’s publicly available reports, risk management processes, and code of conduct “compare[d] favorably with the guidelines of the proposal”); *Caterpillar, Inc.* (avail. Mar. 11, 2008) (concurring with the company’s exclusion of a shareholder proposal requesting that the company prepare a global warming report where the company had already published a report that contained information relating to its environmental initiatives); *Wal-Mart Stores, Inc.* (avail. Mar. 10, 2008) (same); *PG&E Corp.* (avail. Mar. 6, 2008) (same); *The Dow Chemical Co.* (avail. Mar. 5, 2008) (same); *Johnson & Johnson* (avail. Feb. 22, 2008) (same). Similarly, the Report regarding the study and assessment of the feasibility of taking the necessary actions to become a Delaware public benefit corporation or otherwise implementing similarly enforceable public purpose compares favorably with the guidelines of the Proposal, which expressly requests the very same report. Accordingly, the Proposal may be excluded under Rule 14a-8(i)(10) as substantially implemented.

We also note that the Proposal requests only an assessment of “the feasibility of taking the necessary actions” to undergo the requested changes. The Proposal does not specify what factors should be considered as part of this feasibility assessment, nor does it dictate the outcome of the feasibility assessment. Moreover, the Staff consistently has concurred with the exclusion of similar shareholder proposals as comparing favorably to the proposal’s request where companies published reports, like the Report, detailing various factors and matters that were considered, even where the company report may not have been, in form or substance, what the proponent envisioned or provided the answer that the proponent expected. For example, in *Wells Fargo & Co.* (avail. Jan. 23, 2018) (“*Wells Fargo 2018*”), the Staff concurred with the exclusion of a shareholder proposal asking the Board to assess and report on the feasibility of requiring senior executives to enter a covenant to reimburse the Company for a portion of certain fines or penalties imposed on the Company. The Board, acting through its Human Resources

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Committee, assessed the feasibility of the requested covenant and issued a one-page report containing its assessment and conclusions, which the Company then made available to shareholders on its website. The committee included an assessment of the practicability and appropriateness of the covenant in its consideration of the covenant's suitability and discussed how the committee had assessed the various policy implications of requiring the covenant. Notably, while the committee determined that the requested action "may be technically feasible," it also stated that "implementing the [c]ovenant is neither practicable nor appropriate for [the Company]." Nonetheless, the Staff concurred that the report was excludable, noting that "the Company's public disclosures compare[d] favorably with the guidelines of the [p]roposal and that the Company ha[d], therefore, substantially implemented the [p]roposal." *See also The Dow Chemical Co.* (avail. Mar. 18, 2014, *recon. denied* Mar. 25, 2014) (concurring with the exclusion of a shareholder proposal requesting that the company prepare a report "assessing the short and long term financial, reputational and operational impacts" of an environmental incident in Bhopal, India where the company included brief statements in a document on its website providing "Q and A" with respect to the Bhopal incident); *Target Corp. (Johnson and Thompson)* (avail. Mar. 26, 2013) (concurring with the exclusion of a shareholder proposal asking the board to study the feasibility of adopting a policy prohibiting the use of treasury funds for direct and indirect political contributions where the company addressed the use of company funds for political purposes in a statement in opposition set forth in a previous proxy statement and in a five-page excerpt of a company report); *TECO Energy, Inc.* (avail. Feb. 21, 2013) (concurring with the exclusion of a shareholder proposal requesting a report on the environmental and public health effects of mountaintop removal operations and the feasibility of mitigating measures, where the company supplemented its sustainability report with a two-page report and four-page table on the topic).

Similarly, the Proposal is not prescriptive and merely seeks an independent study by an outside expert, with a report and recommendations, assessing the feasibility of taking the necessary actions to become a Delaware public benefit corporation, or otherwise implementing similarly enforceable public purpose. As demonstrated above, the Report does exactly that. Even if the Report is not the outcome the Proponent envisioned, consistent with *Wells Fargo 2018* and the other above-cited precedent, the Committee action and the Report nonetheless compare favorably with the essential objective of the Proposal such that relief under Rule 14a-8(i)(10) is warranted.

Further, the Staff has consistently granted exclusion when a shareholder proposal requests that the board take action and the board substantially implements the shareholder proposal through the action of one of its committees. As in *Wells Fargo 2018*, the commissioning of the Report here, inclusive of the independent study described therein, is substantially implemented by Committee action when the Proposal requests that the Board commission the Report. *See also AT&T Inc.* (avail. Jan. 22, 2014) (concurring with the exclusion of a shareholder proposal that the board adopt a policy that in the event of a change of control, there shall be no acceleration of vesting of any equity award granted to any senior

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executive when the human resources committee amended the relevant incentive plan); *Hewlett-Packard Co.* (avail. Dec. 18, 2013) (concurring with the exclusion of a shareholder proposal requesting that the board review and amend the company's human rights policies when the nominating and governance committee reviewed the human rights policies).

Accordingly, for the reasons set forth above, the Proposal may be excluded from the Company's 2020 Proxy Materials under Rule 14a-8(i)(10).

CONCLUSION

Based upon the foregoing analysis and the No-Action Request, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2020 Proxy Materials. In accordance with Rule 14a-8(j), a copy of this supplemental letter and its attachments is being sent on this date to the Proponent.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8287, or Mary E. Schaffner, Senior Vice President and Senior Company Counsel, at (612) 667-2367.

Sincerely,



Elizabeth A. Ising

Enclosures

cc: Mary E. Schaffner, Senior Vice President and Senior Company Counsel
John C. Harrington, Harrington Investments, Inc.

EXHIBIT A

Independent Study and Report and Wells Fargo & Company Response regarding Public Benefit Corporations

In 2019, Wells Fargo & Company (the “Company” or “Wells Fargo”) received a stockholder proposal (the “Proposal”) asking its Board of Directors (the “Board”) to commission an independent study, utilizing outside experts, with a report and recommendation to stockholders, to assess the feasibility of taking the necessary actions to become a Delaware public benefit corporation, or otherwise implementing similarly enforceable public purpose, accountability and reporting measures to the Company’s corporate governance documents to protect the interests of the Company’s critical stakeholders but without becoming a public benefit corporation.

The Board, acting through its Governance and Nominating Committee (the “GNC”) (to which the Board has delegated authority to oversee the Company’s corporate governance practices), engaged the law firm of Richards, Layton & Finger, PA to conduct the study and prepare the report requested in the Proposal.

The study regarding Delaware public benefit corporations and resulting report in response to the Proposal was delivered to the GNC and the Board and is included as the first part of this document beginning on the following page.

Wells Fargo’s response to the report is included as the second part of this document following the report.

**REPORT TO THE GOVERNANCE AND NOMINATING COMMITTEE OF THE
BOARD OF DIRECTORS OF WELLS FARGO & COMPANY
REGARDING PUBLIC BENEFIT CORPORATIONS**

In 2019, Wells Fargo & Company (the “Company” or “Wells Fargo”) received a stockholder proposal (the “Proposal”) asking its Board of Directors (the “Board”) to commission an independent study, utilizing outside experts, with a report and recommendation to stockholders, to assess the feasibility of (i) taking the necessary actions to become a Delaware public benefit corporation or (ii) otherwise implementing similarly enforceable public purpose, accountability and reporting measures to the Company’s corporate governance documents to protect the interests of the Company’s critical stakeholders but without becoming a public benefit corporation. The Board, acting through its Governance and Nominating Committee (the “GNC”) (to which the Board has delegated authority to oversee the Company’s corporate governance practices), engaged us to assist the GNC in conducting the study and preparing the report requested in the Proposal. Set forth below is our study regarding Delaware public benefit corporations and the resulting report in response to the Proposal.

A. Feasibility of Becoming a Delaware Public Benefit Corporation

The following section provides an overview of notable statutory requirements relating to the feasibility of Wells Fargo becoming a Delaware public benefit corporation as well as information regarding the management and governance of a public benefit corporation.

Background on Delaware Public Benefit Corporations

Wells Fargo is incorporated in the State of Delaware. Delaware law permits the organization of “public benefit corporations,” which are for-profit corporations organized under and subject to the General Corporation Law of the State of Delaware (the “DGCL”), that are “intended to produce a public benefit and to operate in a responsible and sustainable manner.”¹ 8 *Del. C. § 362(a)*. The directors of public benefit corporations are required to manage the corporation in a manner that balances the stockholders’ pecuniary interests, the best interests of

¹ The DGCL defines a “public benefit” as “a positive effect (or reduction of negative effects) on 1 or more categories of persons, entities, communities or interests (other than stockholders in their capacities as stockholders) including, but not limited to, effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific or technological nature.” 8 *Del. C. § 362(b)*.



those materially affected by the corporation's conduct, and the specific public benefit or benefits identified in the corporation's certificate of incorporation. *Id.*

Process of Becoming a Delaware Public Benefit Corporation

An existing corporation that is not a public benefit corporation may become a public benefit corporation by either amending its certificate of incorporation or merging with or into another entity resulting in the shares of the existing corporation being converted into shares of a public benefit corporation. An amendment to the certificate of incorporation to become a public benefit corporation would require the approval of the board of directors and the requisite vote of the stockholders. 8 *Del. C.* § 242. The certificate of incorporation would need to be amended so that (i) the heading states that the corporation is a public benefit corporation, and (ii) the certificate of incorporation identifies one or more specific public benefits to be promoted by the corporation. A merger that results in the shares of the corporation being converted into shares of a public benefit corporation similarly would require the approval of the board of directors and the requisite vote of the stockholders.² Such an amendment to the certificate of incorporation or a merger would require the approval of the holders of two-thirds of the outstanding stock of the corporation entitled to vote thereon. 8 *Del. C.* § 363(a). Accordingly, to become a public benefit corporation, the Board would need to determine that becoming a public benefit corporation is advisable and in the best interests of Wells Fargo and its stockholders, and Wells Fargo would need to obtain the affirmative vote of the holders of two-thirds of its outstanding common stock. The solicitation of the stockholder vote would require the Company to file solicitation materials with the Securities and Exchange Commission (the "SEC") and, thereafter, submit the amendment to the certificate of incorporation or the merger to a vote of the stockholders at an annual or special meeting of the stockholders or seek such stockholder approval by written consent.

If Wells Fargo were to obtain the requisite stockholder vote in the case of an amendment to the Company's Restated Certificate of Incorporation, the officers of the Company would then be required to file with the Secretary of State of the State of Delaware (the "Secretary of State") a certificate of amendment to the Restated Certificate of Incorporation setting forth the amendment or an amended and restated certificate of incorporation incorporating the amendment. If Wells Fargo were to obtain the requisite stockholder vote in the case of a merger, the officers of the surviving public benefit corporation would then be required to file with the Secretary of State a certificate of merger. In either case, if the requisite stockholder vote were obtained via written consent in lieu of a meeting, the officers of the Company would be required to send a Section 228(e) notice to those stockholders that did not consent to the adoption of the amendment or the merger, as applicable.

Appraisal Rights in Connection with a Conversion to a Public Benefit Corporation

Under certain circumstances, the conversion of an existing corporation to a public benefit corporation may entitle dissenting stockholders to exercise statutory appraisal rights (*i.e.*, the right

² Note that if such a merger is structured so that Wells Fargo merges with and into a public benefit corporation, Wells Fargo's third-party contracts would need to be reviewed to determine how a merger through which Wells Fargo merges out of existence would affect its existing contracts.

to seek a judicial determination of the fair value of the dissenting stockholders' shares, payable in cash with interest at the statutory rate). 8 *Del. C.* § 363(b). Specifically, pursuant to the DGCL, a stockholder that has not voted in favor of (or consented in writing to) an amendment to the certificate of incorporation or a merger that would result in the corporation becoming a public benefit corporation is entitled to appraisal rights with respect to such stockholder's shares; provided, however, that such appraisal rights are not available for shares of any class or series that is listed on a national securities exchange or held of record by more than 2,000 holders, unless, in the case of a merger, the stockholders are required to accept anything for their shares other than publicly traded shares of stock, cash in lieu of fractional shares, or any combination thereof. 8 *Del. C.* § 363(b). Accordingly, in the case of an amendment to the Restated Certificate of Incorporation, appraisal rights would not be available to the holders of the outstanding shares of Wells Fargo common stock (because such shares are listed on a national securities exchange), but would be available to the holders of the outstanding shares of certain series of Wells Fargo preferred stock (because such shares are neither listed on a national securities exchange nor held of record by more than 2,000 holders).³ Similarly, in the case of a merger, appraisal rights would be available to the holders of the outstanding shares of the same series of Wells Fargo preferred stock.⁴

Governance of a Public Benefit Corporation

Delaware laws governing the internal affairs of a conventional stock corporation are largely applicable to a public benefit corporation, although there are certain significant differences including those relating to the fiduciary duties of the board of directors. Specifically, in a public benefit corporation, directors are required to manage the corporation in a manner that balances the pecuniary interests of the stockholders, the best interests of those materially affected by the corporation's conduct, and the specific public benefit or benefits identified in its certificate of incorporation. 8 *Del. C.* § 365(a). A director of a public benefit corporation does not, by virtue of the public benefit provisions, have any duty to any person on account of such person's interests in the public benefit(s) identified in the certificate of incorporation or on account of any interest materially affected by the corporation's conduct. 8 *Del. C.* § 365(b). For any decision requiring such balancing, each director is deemed to have satisfied his or her fiduciary duties to stockholders and the corporation if his or her decision is informed and disinterested and not such that no person of ordinary, sound judgment would approve. 8 *Del. C.* § 365(b). The certificate of incorporation of a public benefit corporation may include a provision that any disinterested failure to satisfy such duties shall not constitute an act or omission not in good faith or a breach of the duty of loyalty. 8 *Del. C.* § 365(c). Stockholders of public benefit corporations who own individually or collectively at least 2% of the corporation's outstanding shares or, in the case of a corporation with shares listed on a national securities exchange, the lesser of such percentage or shares of at least \$2 million in

³ Such series of preferred stock include Series I, Series K, Series S and Series U.

⁴ In the case of a merger, the holders of Wells Fargo common stock would not have appraisal rights unless the Wells Fargo stockholders are required to accept anything for their shares other than publicly traded shares of stock, cash in lieu of fractional shares or any combination thereof. If any stockholders are entitled to appraisal rights in connection with the conversion to a public benefit corporation, the proxy materials soliciting the approval of the stockholders would also need to include a notice of appraisal rights in accordance with Delaware law.

market value, may bring derivative claims against the board of directors for failure to balance stockholder and public benefit interests properly. 8 *Del. C.* § 367.

Other Statutory Considerations and Requirements

In addition, the following requirements currently apply to a Delaware public benefit corporation:

- If the name of the corporation does not include the words “public benefit corporation,” P.B.C. or PBC,⁵ the corporation must, prior to issuing shares, provide notice to the persons being issued such shares that the corporation is a public benefit corporation. 8 *Del. C.* § 362(c).
- Any stock certificates shall note conspicuously that the corporation is a public benefit corporation, and any notice given to holders of uncertificated shares pursuant to Section 151(f) of the DGCL shall state conspicuously that the corporation is a public benefit corporation. 8 *Del. C.* § 364.
- Any notice of a meeting of stockholders must include a statement that it is a public benefit corporation. 8 *Del. C.* § 366(a).
- It must, no less than biennially, provide stockholders with a statement as to the corporation’s promotion of the public benefit identified in the certificate of incorporation and of the best interests of those materially affected by the corporation’s conduct. 8 *Del. C.* § 366(b).
- It may not amend its certificate of incorporation to delete or amend the public benefit provision or merge or consolidate with and into an entity that results in its shares being converted into shares of a corporation that is not a public benefit corporation without the approval of the holders of two-thirds of the outstanding shares of stock of the corporation entitled to vote thereon. 8 *Del. C.* § 363(c).

B. Feasibility of Implementing Enforceable Public Purpose, Accountability and Reporting Measures in Wells Fargo’s Governing Documents

Rather than converting to a public benefit corporation, a corporation may amend the purpose clause of its certificate of incorporation to add a public benefit purpose that does not opt into public benefit corporation status,⁶ or may alternatively amend its certificate of incorporation

⁵ If the corporation changes its name to indicate that it is a public benefit corporation, the corporation would need to make other necessary changes to reflect the name change, including, but not limited to, updating bank accounts, business cards, letterhead and registrations.

⁶ For such a provision to be enforceable, it would need to be included in the certificate of incorporation and could not be accomplished through an amendment to the bylaws or an amendment to the corporate governance guidelines or another policy of the corporation. 8 *Del. C.*

or bylaws to add reporting or other accountability requirements such as those described in the Proposal.⁷ Such amendments would not result in the corporation becoming a public benefit corporation and may not alter directors' fiduciary duties to stockholders and must otherwise be permitted under Delaware law.⁸

Such an amendment to the certificate of incorporation would require the approval of the board of directors and the subsequent approval of the holders of a majority of the outstanding stock entitled to vote thereon. 8 *Del. C.* § 242.⁹ Notably, the voting standard to amend the purpose clause of the certificate of incorporation in this manner (the majority of the outstanding stock entitled to vote thereon) presents less of a hurdle than the standard required to convert to a public benefit corporation (two-thirds of the outstanding stock entitled to vote thereon). Such an amendment to the bylaws would require either the approval of the holders of a majority of the outstanding stock entitled to vote at the meeting of stockholders or the approval of the Board by a vote of a majority of the entire Board. In either case, because the corporation would not be a public benefit corporation, the directors would continue to have the standard fiduciary duties to the corporation and its stockholders. Any decision made by the Board with respect to the public benefit purpose would need to be made consistent with the best interests of Wells Fargo and its stockholders.

C. Other Relevant Factors, Considerations and Recommendations

As described above, both converting to a public benefit corporation and implementing public purpose, accountability and reporting measures in the Company's governing documents are feasible as a technical matter under Delaware law. However, there are various additional relevant factors and issues relating to the practicality and appropriateness of taking these steps that we recommend be considered by the Board and stockholders in any consideration of this matter, including, but not limited to, those described below.

§ 102(a)(3) ("The certificate of incorporation shall set forth ... [t]he nature of the business or purposes to be conducted or promoted.").

⁷ An accountability or reporting measure also could be included in the corporate governance guidelines or another policy of the corporation; however, the enforceability of such a measure would depend on applicable law and other relevant factors.

⁸ See, e.g., Article Third of the Restated Certificate of Incorporation of The Goldman Sachs Group, Inc. ("Without limiting the generality of the foregoing, the Corporation shall have all of the powers conferred on corporations by the Delaware General Corporation Law and other law, including the power and authority to make an initial charitable contribution (as defined in Section 170(c) of the Internal Revenue Code of 1986, as currently in effect or as the same may hereafter be amended) of up to an aggregate of \$200,000,000 to one or more entities (the "Contribution"), and to make other charitable contributions from time to time thereafter, in such amounts, on such terms and conditions and for such purposes as may be lawful.").

⁹ The process of the solicitation of the vote of the requisite stockholders would be the same as the process described in Section A above.

Ability to Obtain the Requisite Stockholder Vote in Connection with a Conversion to a Public Benefit Corporation or an Amendment to the Company's Certificate of Incorporation

Amending the certificate of incorporation or merging to become a Delaware public benefit corporation is only feasible if Wells Fargo is able to obtain a vote of the holders of two-thirds of its outstanding common stock. Amending the Company's certificate of incorporation to add a public benefit purpose or to implement accountability and reporting measures such as those described in the Proposal but without becoming a public benefit corporation would require the vote of the holders of a majority of the Company's outstanding common stock. Under both of these voting standards, obtaining the required stockholder approval could be challenging, particularly given the lack of precedent for a publicly traded corporation to convert to a public benefit corporation or amend the purpose clause in its certificate of incorporation to implement enforceable public purpose or accountability and reporting measures such as those described in the Proposal.

Ability of Directors of Delaware Corporations to Consider the Interests of Stakeholders

The directors of Delaware corporations that are not public benefit corporations or do not implement public purpose, accountability and reporting measures such as those described in the Proposal in their governing documents may (and often do) consider the interests of other stakeholders of the corporation so long as any decisions made with respect to such stakeholders are in the best interests of the corporation and its stockholders.¹⁰

Lack of Precedent for the Management of Public Benefit Corporations

To our knowledge, no U.S. publicly traded corporation has converted to a public benefit corporation, and only one U.S. corporation has gone public as a public benefit corporation.¹¹ There are no major financial institutions that are public benefit corporations. Similarly, to our knowledge, there is minimal precedent regarding publicly traded corporations that have implemented public purpose or accountability and reporting measures such as those described in the Proposal in their certificate of incorporation or bylaws. As a result, there would likely be some uncertainty regarding decision-making in a public benefit corporation or a corporation that has implemented a public benefit purpose in its certificate of incorporation where the interests of stockholders and other stakeholders or the public benefit diverge. In addition, there is no case law in Delaware that provides guidance regarding the balancing obligation of directors of public benefit corporations.

¹⁰ See footnote 7 *supra*. See also *eBay Domestic Holdings, Inc. v. Newmark*, 16 A.3d 1, 33 (Del. Ch. 2010) (noting that, for corporations that are not public benefit corporations, “[p]romoting, protecting, or pursuing nonstockholder considerations must lead at some point to value for stockholders”); *Revlon Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173, 183 (Del. 1986) (noting that, with respect to corporations that are not public benefit corporations, “[a] board may have regard for various constituencies in discharging its responsibilities, provided there are rationally related benefits accruing to the stockholders.”).

¹¹ Laureate Education, Inc., a for-profit education company, completed its initial public offering in February 2017 and is listed on the Nasdaq Global Select Market.

Regulatory Uncertainty and Oversight by Financial Regulators

As a large financial institution, Wells Fargo is subject to review and examination by a number of regulatory agencies, including, among others, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Consumer Financial Protection Bureau, the Securities and Exchange Commission and the Commodities Futures Trading Commission. Compliance with the rules and regulations of these authorities allows Wells Fargo to continue to do business as a financial institution. The views of such authorities, as well as Wells Fargo's ability to comply with the applicable rules and regulations of such authorities, could impact Wells Fargo's ability to convert to a public benefit corporation or include a public benefit purpose or reporting and accountability measures such as those described in the Proposal in its governing documents.

Market Uncertainty

Due to the lack of precedent for a publicly traded company (let alone a major financial institution) to either convert to a public benefit corporation or implement public purpose, accountability and reporting measures such as those described in the Proposal in its certificate of incorporation or bylaws, it would be difficult to predict the impact such actions would have on a company's short and long-term stock price and market capitalization.

Costs of Implementation

The costs of converting to a public benefit corporation could include, but are not limited to, (i) the fees and expenses of legal and other advisors in connection with the conversion and managing the corporation as a public benefit corporation following the conversion; (ii) the costs, fees and expenses incurred in connection with any appraisal proceedings that may be filed by certain holders of preferred stock; (iii) the fees and expenses incurred in connection with any stockholder derivative litigation relating to the conversion; (iv) the costs of soliciting stockholder approval of the conversion to a public benefit corporation; and (v) the costs of preparing the biennial statement to stockholders (as described above). Similarly, the costs of implementing public purpose, accountability and reporting measures such as those described in the Proposal could include, but are not limited to, (a) the fees and expenses of legal and other advisors in connection with the amendment of the governing documents and management of the corporation following the implementation, and (b) the costs of soliciting stockholder approval of any amendment to the certificate of incorporation.

Wells Fargo's Current Public Benefit Initiatives

Wells Fargo is engaged in various public benefit activities and initiatives that it has undertaken under its existing corporate governance structure and periodically publishes public reports describing those activities and initiatives.

Dated: January 28, 2020

Response of Wells Fargo & Company

January 30, 2020

The Board, acting through its Governance and Nominating Committee (to which the Board has delegated authority to oversee the Company's corporate governance practices), reviewed the report prepared by Richards, Layton & Finger PA (the "Report"), which is included in the first part of this document. Taking into account the information in the Report and for the additional reasons discussed below, the Board determined that while aspects of the Proposal may be technically feasible, implementing the Proposal is neither appropriate nor necessary, and the Board does not recommend any further action regarding the Proposal.

Wells Fargo has long believed that focusing on the needs of all of its stakeholders, including customers, employees, regulators, suppliers, communities, and stockholders, drives long-term value creation. Wells Fargo understands that it has a fundamental commitment to all of its stakeholders, and one of the first actions of our new CEO, Charles W. Scharf, was to express his support for, and sign on to, the Business Roundtable's Statement on the Purpose of a Corporation (the "Business Roundtable Statement"). The Business Roundtable Statement sets forth a commitment by the companies signing the document in five areas that Wells Fargo believes are consistent with the Company's existing Vision, Values & Goals and Code of Ethics and Business Conduct (the "Code of Ethics"): (1) delivering value to our customers; (2) investing in our employees; (3) dealing fairly and ethically with our suppliers; (4) supporting our communities in which we work; and (5) generating long-term value for stockholders.

Under Wells Fargo's existing corporate governance structure, the Board's Corporate Responsibility Committee (the "CRC") oversees—and our management team directs—Wells Fargo's policies, programs, and strategies regarding corporate responsibility matters of significance to Wells Fargo and the public at large, including our community development and reinvestment activities and performance, fair and responsible lending, support of charitable organizations, and environmental issues. The CRC also monitors the Company's relationships and reputation with external stakeholders relating to significant corporate responsibility matters, including by taking into account feedback from the Company's external Stakeholder Advisory Council. Wells Fargo formed the Stakeholder Advisory Council in 2017 to provide insight and feedback to the Board and senior management from a stakeholder perspective, and it is composed of national thought leaders representing stakeholder groups important to the Company, including groups focused on human rights, consumer rights, fair lending, the environment, civil rights, and governance. In connection with its oversight activities, the CRC works closely with management's Public Affairs organization, which, among other things, includes our Corporate Philanthropy and Community Relations group that manages how we partner across Wells Fargo to make an impact on the communities we serve, and our Sustainability and Corporate Responsibility group that focuses on our awareness, management, performance, and disclosure relating to critical environmental, social, and governance issues. The CRC and our management team are focused on developing approaches to integrate public benefit strategies into our business in ways consistent with our Vision, Values & Goals, Code of Ethics, and the Business Roundtable Statement.

Wells Fargo has a deep commitment to our stakeholders as we continue to work to rebuild trust and transform our Company to better serve our customers and other stakeholders. We are committed to transparency through our public disclosures about our public benefit activities, including through our [Business Standards Report](#) issued in January 2019, our [2018 Corporate Responsibility Report](#) published in August 2019, and [Shaping our CSR Priorities](#) report issued in May 2018. In these and other disclosures, we identify various measurable outcomes, commitments, and goals of the Company, including regarding, among other topics, our contributions to non-profit organizations, our small-business and minority-borrower

lending activities, our investment in our employees, our engagement and diversity initiatives with suppliers, and our sustainability initiatives. Our [Shaping our CSR Priorities](#) report also details the formal process we go through on a routine basis to engage with our stakeholders to better understand the environmental, social, and governance issues of importance to our stakeholders, and our approach to integrating these findings into our corporate responsibility activities. By setting goals and providing [periodic updates](#) on our progress, we hold ourselves accountable to our many stakeholders, including stockholders, customers, employees, regulators, and the communities we serve, with respect to our public benefit activities.

Based on a review of the Report and Wells Fargo's public benefit activities, the Board concluded that Wells Fargo's existing corporate governance structure provides our management team and Board with appropriate flexibility to promote the interests of our various stakeholders and to manage important environmental, social, and governance matters without the significant uncertainties, costs, and distractions that the Proposal's implementation would require. Accordingly, the Board does not recommend any further action.

SANFORD J. LEWIS, ATTORNEY

January 8, 2020

Via electronic mail

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Shareholder Proposal to Wells Fargo Inc. Regarding study of corporate governance/public benefit company on Behalf of Harrington Investments Inc.

Ladies and Gentlemen:

Harrington Investments Inc. (the “Proponent”) is beneficial owner of common stock of Wells Fargo Inc. (the “Company”) and has submitted a shareholder proposal (the “Proposal”) to the Company. I have been asked by the Proponent to respond to the letter dated December 27, 2019 (“Company Letter”) sent to the Securities and Exchange Commission by Elizabeth Ising of Gibson Dunn. A copy of this letter is being emailed concurrently to Elizabeth Ising.

The Company’s no-action request states that plans are underway for its Governance and Nominating Committee to review and authorize publication of the report requested by the proposal at an upcoming meeting, and then publish the report by January 30, 2020. The Company sought exclusion of the proposal on the basis of substantial implementation, asserting that this upcoming action, combined with supplemental notification to the Staff of board action, will satisfy the requirements of the proposal.

We are pleased to learn that the Board anticipates publishing the study requested by the proposal. Consistent with the Company letter’s stated intent to provide a supplement to the no action request when the report is published, we look forward to review of what the Company publishes in order to determine whether the report substantially implements the Proposal.

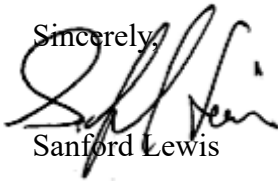
The Company letter puts forth a promise to address the current proposal in the future. However, promises to take action at a future date, whether that date is defined or not, do not constitute substantial implementation pursuant to Rule 14a-8(i)(10). See, for instance, *The J.M. Smucker Company* (May 9, 2011) (Staff disagreed with the company’s assertion that its commitment to publish a sustainability report in the coming year acted as “substantial implementation” of a proposal requesting sustainability reporting). See also *Kohl’s Corporation* (February 8, 2016), where the company’s public statement of intention to appoint an independent board chair in the future “whenever possible” — if the existing Chairman retired, or if an independent

director were then available — failed to satisfy a shareholder proposal requesting that the Board ensure the Board Chair position be held by an independent director.

The proposal to Wells Fargo & Company (the “Company”), requested that the Board commission an independent study, utilizing outside experts, to assess the feasibility of taking the necessary actions to become a Delaware Public Benefit Corporation, or otherwise implementing similarly enforceable public purpose, accountability and reporting measures to the Company’s corporate governance documents, without becoming a Public Benefit Corporation. We requested that the report and recommendations be shared with shareholder by October 2020.

Naturally, this is a context in which the proposal cannot be deemed to be substantially implemented until after the report becomes public. We look forward to the further correspondence from the Company.

Sincerely,

A handwritten signature in black ink, appearing to read "Sanford Lewis", written over the printed name.

Sanford Lewis

December 27, 2019

VIA E-MAIL

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *Wells Fargo & Company*
Shareholder Proposal of Harrington Investments, Inc.
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, Wells Fargo & Company (the “Company”), intends to omit from its proxy statement and form of proxy for its 2020 Annual Meeting of Shareholders (collectively, the “2020 Proxy Materials”) a shareholder proposal (the “Proposal”) and statements in support thereof received from Harrington Investments, Inc. (the “Proponent”).

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2020 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the “Staff”). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

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THE PROPOSAL

The Proposal states:

Resolved: that Shareholders request the Board to commission an independent study, utilizing outside experts, with a report and recommendations to shareholders by October 2020, to assess the feasibility of taking the necessary actions to become a Delaware Public Benefit Corporation, or otherwise implementing similarly enforceable public purpose, accountability and reporting measures to the Company's corporate governance documents to protect the interests of our Company's critical stakeholders but without becoming such a Public Benefit Corporation.

A copy of the Proposal is attached to this letter as Exhibit A.

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may properly be excluded from the 2020 Proxy Materials pursuant to Rule 14a-8(i)(10) upon confirmation that (i) the Governance and Nominating Committee (the "Committee") of the Board of Directors (the "Board") has commissioned the requested independent study, utilizing an outside expert, including a report and recommendations to shareholders (the "Report"), and (ii) the Report has been published on the Company's website.

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(i)(10) As Substantially Implemented.

A. Background.

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy materials if the company has "substantially implemented" the proposal. The Commission stated in 1976 that the predecessor to Rule 14a-8(i)(10) was "designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." Exchange Act Release No. 12598 (July 7, 1976). Originally, the Staff narrowly interpreted this predecessor rule and concurred with the exclusion of a proposal only when proposals were "'fully' effected" by the company. *See* Exchange Act Release No. 19135 (Oct. 14, 1982). By 1983, the Commission recognized that the "previous formalistic application of [the Rule] defeated its purpose" because proponents were successfully avoiding exclusion by submitting proposals that differed from existing company policy in minor respects. Exchange Act Release No. 20091, at § II.E.6. (Aug. 16, 1983) ("1983 Release"). Therefore, in the 1983

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Release, the Commission adopted a revised interpretation of the rule to permit the omission of proposals that had been “substantially implemented,” and the Commission codified this revised interpretation in Exchange Act Release No. 40018, at n.30 (May 21, 1998). Applying this standard, the Staff has noted that “a determination that the company has substantially implemented the proposal depends upon whether [the company’s] particular policies, practices and procedures compare favorably with the guidelines of the proposal.” *Walgreen Co.* (avail. Sept. 26, 2013); *Texaco, Inc.* (avail. Mar. 28, 1991).

At the same time, a company need not implement a proposal in exactly the same manner set forth by the proponent. In *General Motors Corp.* (avail. Mar. 4, 1996), the company observed that the Staff has not required that a company implement the action requested in a proposal exactly in all details but has been willing to issue no-action letters under the predecessor of Rule 14a-8(i)(10) in situations where the “essential objective” of the proposal had been satisfied. The company further argued, “[i]f the mootness requirement [under the predecessor rule] were applied too strictly, the intention of [the rule]—permitting exclusion of ‘substantially implemented’ proposals—could be evaded merely by including some element in the proposal that differs from the registrant’s policy or practice.” For example, the Staff has concurred that companies, when substantially implementing a shareholder proposal, can address aspects of implementation on which a proposal is silent or which may differ from the manner in which the shareholder proponent would implement the proposal. See, e.g., *Hewlett-Packard Co.* (avail. Dec. 11, 2007) (proposal requesting that the board permit shareholders to call special meetings was substantially implemented by a proposed bylaw amendment to permit shareholders to call a special meeting unless the board determined that the special business to be addressed had been addressed recently or would soon be addressed at an annual meeting); *Johnson & Johnson* (avail. Feb. 17, 2006) (proposal that requested the company to confirm the legitimacy of all current and future U.S. employees was substantially implemented because the company had verified the legitimacy of over 91% of its domestic workforce). Therefore, if a company has satisfactorily addressed both the proposal’s underlying concerns and its “essential objective,” the proposal will be deemed “substantially implemented” and, therefore, may be excluded as moot. See, e.g., *Quest Diagnostics, Inc.* (avail. Mar. 17, 2016); *Exelon Corp.* (avail. Feb. 26, 2010); *Anheuser-Busch Companies, Inc.* (avail. Jan. 17, 2007); *ConAgra Foods, Inc.* (avail. July 3, 2006); *Johnson & Johnson* (avail. Feb. 17, 2006); *Talbots* (avail. Apr. 5, 2002); *Masco Corp.* (avail. Mar. 29, 1999); *The Gap, Inc.* (avail. Mar. 8, 1996).

B. Anticipated Committee Action And Publication Of The Report Will Substantially Implement The Proposal.

The Proposal requests that the Board commission the independent study, including the Report. The Board has previously delegated matters such as those covered by the Proposal to the Committee, which according to its Charter is responsible for overseeing corporate governance

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matters.¹ As a result, the Committee is charged with commissioning the study and authorizing publication of the Report (the “Committee Action”). The Report is expected to: (i) consist of an independent study utilizing an outside expert; (ii) include recommendations to shareholders; (iii) assess the feasibility of the Company taking the necessary actions to become a Delaware Public Benefit Corporation or otherwise implementing similarly enforceable public purpose, accountability and reporting measures to the Company’s corporate governance documents but without becoming a Delaware Public Benefit Corporation; and (iv) be made publicly available on the Company’s website. Thus, Committee Action and publication of the Report will substantially implement the Proposal because they will address the Proposal’s underlying concerns and essential objective consistent with Rule 14a-8(i)(10). The Committee is scheduled to review and authorize publication of the Report at an upcoming meeting, and the Company expects to then promptly publish the Report thereafter by January 30, 2020.

C. Supplemental Notification.

We submit this no-action request now to address the timing requirements of Rule 14a-8(j). We will notify the Staff and the Proponent supplementally after the Committee Action and publication of the Report on the Company’s website, which are expected to occur by January 30, 2020. The Staff consistently has granted no-action relief under Rule 14a-8(i)(10) where a company has notified the Staff of the actions expected to be taken that will substantially implement the proposal and then supplements its request for no-action relief by notifying the Staff after those actions have been taken. *See, e.g., United Continental Holdings, Inc.* (avail. Apr. 13, 2018); *United Technologies Corporation* (avail. Feb. 14, 2018); *The Southern Co.* (avail. Feb. 24, 2017); *Mattel, Inc.* (avail. Feb. 3, 2017); *The Wendy’s Co.* (avail. Mar. 2, 2016); *The Southern Co.* (avail. Feb. 26, 2016); *The Southern Co.* (avail. Mar. 6, 2015); *Visa Inc.* (avail. Nov. 14, 2014); *Hewlett-Packard Co.* (avail. Dec. 19, 2013); *Starbucks Corp.* (avail. Nov. 27, 2012); *DIRECTV* (avail. Feb. 22, 2011); *NiSource Inc.* (avail. Mar. 10, 2008); *Johnson & Johnson* (avail. Feb. 19, 2008) (each granting no-action relief where the company notified the Staff of its intention to omit a shareholder proposal under Rule 14a-8(i)(10) because the board of directors was expected to take action that would substantially implement the proposal, and the company supplementally notified the Staff of the board action).

CONCLUSION

Based upon the foregoing analysis and further details to be provided supplementally regarding how the Report compares favorably to the Proposal, we believe that upon confirmation of the Committee Action and the publication of the Report, the Proposal will have been

¹ Available at <https://www.wellsfargo.com/assets/pdf/about/corporate/governance-and-nominating-committee-charter.pdf>.

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substantially implemented. Thus, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2020 Proxy Materials in reliance on Rule 14a-8(i)(10).

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8287 or Mary E. Schaffner, Senior Vice President and Senior Company Counsel, at (612) 667-2367.

Sincerely,



Elizabeth A. Ising

Enclosures

cc: Mary E. Schaffner, Senior Vice President and Senior Company Counsel
Willie J. White, Vice President and Senior Counsel
John C. Harrington, Harrington Investments, Inc.

EXHIBIT A



November 12, 2019

Wells Fargo Company
Attn: Corporate Secretary
MAC# D1130-117,
301 South Tryon Street, 11th Floor,
Charlotte, NC 28282,

RE: Shareholder Proposal

Dear Corporate Secretary,

As a shareholder in Wells Fargo, I, representing Harrington Investments, Inc. (HII), am filing the enclosed shareholder resolution pursuant to Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934 for inclusion in Wells Fargo's Proxy Statement for the 2020 annual meeting of shareholders.

HII is the beneficial owner of at least \$2,000 worth of Wells Fargo stock. HII has held the requisite number of shares for over one year, and plan to hold sufficient shares in Wells Fargo through the date of the annual shareholders' meeting. In accordance with Rule 14a-8 of the Securities Exchange Act of 1934, verification of ownership is included in this packet. I or a representative will attend the stockholders' meeting to move the resolution as required by SEC rules.

If you have any questions, I can be contacted at (707) 252-6166.

Sincerely,

A handwritten signature in dark ink, appearing to read "John C. Harrington", is written over a horizontal line. The signature is fluid and cursive.

President and CEO
Harrington Investments, Inc.

Our Company is suffering a prolonged crisis of public, government and consumer trust, paying over 17.2 Billion dollars in penalties since 2000;

The crisis has caused our Company to lose the trust of our depositors, due to the 3.5 Million accounts using fictitious or unauthorized customer information (185 Million dollars in penalties) and 800,000 people forced to take redundant auto insurance from 2012 to 2017 (80 Million dollars in refunds and compensation);

Government regulators have also lost confidence in the Company —the Federal Reserve has capped the bank's assets, ordered our Company to replace four directors, and cited "widespread insurance abuse"; the Consumer Financial Protection Bureau and Office of the Comptroller of the Currency settled for \$1 Billion for failure to manage risk, and the United States Department of Justice settled for \$2 Billion over mortgage backed securities originated by Wells Fargo;

Observers are sending clear signals that the Company's license to operate remains at risk - in 2018, a retired Supreme Court justice called for the death penalty for Wells Fargo, "revoking its corporate charter forever..." and in a House Financial Services Committee hearing, the Chair stated, "Wells Fargo's ongoing lawlessness and failure to right the ship, suggests the bank... is simply too big to manage", and "regulators seem unwilling to take forceful actions";

Our Board of Directors have a duty of care and loyalty, to be fully informed by seeking outside advice and other resources to respond to this intractable crisis;

The Delaware General Corporation Law allows our Company to amend its certificate of incorporation to become a Public Benefit Corporation which is defined as a corporation

“intended to produce a public benefit or public benefits and to operate in a responsible and sustainable manner”;

As such, our Company would have expanded accountability to shareholders for the interests of those materially affected by the corporation’s conduct, including depositors, regulators and others who have lost trust in the Company, and an obligation to report on the Company’s impact on those stakeholders;

Resolved: that Shareholders request the Board to commission an independent study, utilizing outside experts, with a report and recommendations to shareholders by October 2020, to assess the feasibility of taking the necessary actions to become a Delaware Public Benefit Corporation, or otherwise implementing similarly enforceable public purpose, accountability and reporting measures to the Company’s corporate governance documents to protect the interests of our Company’s critical stakeholders but without becoming such a Public Benefit Corporation.

Supporting Statement: The proponent believes a fundamental change in our Company’s purpose is necessary to transcend the fumbled attempts to reorganize in the face of the crisis, and rebuild confidence of consumers, government and the public. The proponent also believes our Company’s shareholders are best served by ensuring the Company pursues shareholder returns in a manner that does not diminish the underlying economy and ecosystem vital to the Company’s long-term performance, and to the wellbeing of share owners and the beneficiaries of institutional investors.



November 12, 2019

HARRINGTON INVESTMENTS INC
1001 2ND ST STE 325
NAPA, CA 94559

Reference #: AM-5449267

Account number ending in:

****_* **

Questions: Contact your advisor or
call Schwab Alliance at
1-800-515-2157.

Important Information regarding shares in your account.

HARRINGTON INVESTMENTS INC,

We're writing to confirm information about the account listed above, which Charles Schwab & Co., Inc. holds as custodian. This account holds in trust 100 shares of WELLS FARGO BK N A WFC common stock. These shares have been held in the account continuously for at least one year prior to and including November 12, 2019.

These shares are held at Depository Trust Company under the nominee name of Charles Schwab & Co., Inc., which serves as custodian for the registration listed above.

Thank you for choosing Schwab. If you have questions, please contact your advisor or Schwab Alliance at 1-800-515-2157. We appreciate your business and look forward to serving you in the future.

Sincerely,

Seth Deibel
Associate, Institutional
MID-MARKET PHOENIX SERVICE
2423 E Lincoln Dr
Phoenix, AZ 85016-1215

Independent investment advisors are not owned by, affiliated with, or supervised by Charles Schwab & Co., Inc. ("Schwab").